CHAPTER 153: WATERSHED PROTECTION

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AUTHORITY AND GENERAL PROVISIONS

§ 153.01 INTENT.

The intent of the Water Supply Watershed Chapter is to protect surface water supplies whose watersheds are located wholly or partially with the jurisdiction of Liberty.

§ 153.02 AUTHORITY AND ENACTMENT.

Pursuant to authority given to municipalities in G.S. Ch. 160A, Article 19, Planning and Regulation of Development, and G.S. § 143-214.5, Water Supply and Watershed Protection, the Liberty Town Council does hereby ordain and enact into law the following sections as the Watershed Protection Ordinance of Liberty.

§ 153.03 JURISDICTION.

(A) The provisions of this chapter shall apply in those areas within the corporate limits and the extraterritorial jurisdiction of Liberty designated as public water supply watersheds by the North Carolina Environmental Management Commission and within the Randleman Lake Watershed designated by the Liberty Town Council and shall be defined and established on the map entitled, Watershed Protection Map of Liberty, North Carolina (the Watershed Map) which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the Town Manager.

(B) The following public water supply watersheds designated by the North Carolina Environmental Management Commission and the Liberty Town Council are located within Liberty.

Watershed	Classification	River Basin
Rocky River	WS-111	Cape Fear

Sandy Creek WS-III Cape Fear

§ 153.04 EXCEPTIONS TO APPLICABILITY.

(A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the density calculations.

(D) A pre-existing lot owned by an individual prior to the effective date of this chapter, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restriction of this chapter. However, this exemption is not applicable to multiply contiguous lots under single ownership. See § 153.26(B)(3) regarding the recombination of existing lots.

§ 153.05 GENERAL SUBDIVISION PROVISIONS.

(A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds of Randolph County until it has been approved in accordance with the provisions of this chapter. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat of the recording of the plat would be in conflict with this chapter.

(B) All applications to subdivide land in a designated water supply watershed shall comply with the application, review and mapping requirements of the Liberty Subdivision Chapter.

(C) If the Planning Board approves the application, the approval shall be indicated on both copies of the plat by the following certificate and signed by the Chairperson or other authorized member of the Board.

Certificate of Approval for Recording, Minor Subdivision

I certify that the plat shown hereon complies with the subdivision regulations for Liberty, North Carolina and any supplemental regulations that may apply and that the plat has been approved according to the procedures for approval of minor subdivisions.

_____ _____

Date Town Manager

NOTICE: This property is located within a Public Water Supply Watershed development restrictions may apply.

Certificate of Approval for Recording, Major Subdivision

This subdivision plat has been found to comply with the provisions of the Subdivision Chapter of Liberty, provided that it is recorded in the Office of the Register of Deeds within 60 days of final approval by the Planning Board.

_____ _____

Date Town Manager

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

§ 153.06 STANDARDS AND REQUIRED IMPROVEMENTS.

(A) Drinking supply. Subdivision in any designated drinking supply watershed shall comply with general requirements and minimum standards of design of the Liberty Subdivision Chapter as well as the requirements specified below.

(B) Space. All lots shall provide adequate building space in accordance with the development standards contained in §§ 153.20 through 153.29. Lots which are smaller than the minimum required for residential lost shall be identified on the plat as, “not for residential purposes.”

(C) Calculation. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(D) Storm water drainage facilities. The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts storm water runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(E) Erosion and sedimentation control. The application shall, where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to and approved by the North Carolina Division of Land Quality.

(F) Roads constructed in critical areas and watershed buffer areas. Where possible roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.

§ 153.08 WORD INTERPRETATION.

For the purpose of this chapter, certain words shall be interpreted as follows.

(A) Words in the present tense include the future tense.

(B) Word uses in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

(C) The word PERSON includes a firm, association, corporation, trust and company as well as an individual.

(D) The word STRUCTURE shall include the word BUILDING.

(E) The word LOT shall include the words PLOT, PARCEL or TRACT.

(F) The word SHALL is always mandatory and not merely directory.

(G) The word WILL is always mandatory and not merely directory.

DEVELOPMENT REGULATIONS

§ 153.20 ESTABLISHMENT OF WATERSHED OVERLAY DISTRICTS.

(A) To provide an additional layer of protection for drinking water supply watersheds, the following watershed overlay districts are established.

(B) Within each watershed shall be 2 tiers of control. The are nearest the water supply shall have the higher level of regulation because approximately to the intake creates higher risk of contamination.

(C) The remaining part of the watershed balance of the watershed shall have less restriction because the greater distance from the point of intake lower risk of contamination.

(D) The following overlay districts shall apply to the watersheds in Liberty:

(1) Sandy Creek; WS-III-BW (Balance of Watershed); and

(2) Rocky River; WS-III-BW (Balance of Watershed).

§ 153.21 SANDY CREEK AND ROCK RIVER; BALANCE OF WATERSHED.

(A) In order to maintain a low to moderate land use intensity pattern, single-family detached uses shall develop at a maximum of 2 primary dwelling units per acre, except within R6 and R12 zoning districts. However, in the absence of public sewer, all waste treatment must be permitted by the County Health Department, in which case the minimum lot size is 40,000 square feet. Single-family detached uses within R6 and R12 zoning districts shall meet the minimum zoning dimensional requirements located in Section 154.066, and be subject to a 24% built upon area as authorized by the Water Supply Watershed Protection Ordinance adopted by the State.

(B) All other residential and nonresidential development shall be allowed a maximum of 24% built-upon area. In addition, non-residential uses may occupy 10% of each watershed with a 70% built-upon area when approved as a special nonresidential intensity allocation (SNIA).

(C) The Town Council is authorized to consider a special use permit for SNIAs consistent with the provisions of §§ 154.190 through 154.239.

(D) Projects must minimize built-upon surface area, direct storm water away from surface waters and incorporate best management practices to minimize water quality impacts.

(E) Non-discharge landfills and sludge application sites are allowed, provided they are permitted uses in the underlying zoning districts.

(1) Permitted uses:

(a) All uses permitted in the underlying zoning districts where the watershed is located subject to the modifications below, unless specifically prohibited in division (E)(2) below;

(b) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990; and

(c) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-0209).

(2) Prohibited uses:

(a) Discharging landfills;

(b) New chemical storage tanks unless a spill containment plan for spill containment shall be designed and certified by a professional engineer. Prior to the issuance of a certificate of occupancy, a professional engineer shall provide certification that the spill containment was built according to the plan. The continued maintenance of all spill containment measures shall be the responsibility of the property owner; and

(c) Storage of toxic and hazardous materials unless plans for spill containment shall be designed and certified by a professional engineer. Prior to the issuance of a certificate of occupancy, a professional engineer shall provide certification that the spill containment was built according to the plans. The continued maintenance of all spill containment measures shall be the responsibility of the property owner.

(3) Density and built-upon limits:

(a) Single-family residential. Development shall not exceed 2 primary dwelling units per acre, as defined on a project by project basis, except within the R6 and R12 zoning districts. No residential lot shall be less than 1/2 acre, except within the R6 and R12 zoning districts. R6 and R12 zoning districts shall meet at least the minimum requirements set forth in Section 154.066 and shall not exceed 24% built-upon area. In the absence of public sewer, however, all waste treatment must be permitted by the County Health Department, in which case the minimum lot size is 40,000 square feet; and

(b) All other residential and non-residential. Development shall not exceed 24% built-upon area on a project by project basis except that up to 10% of the balance of the watershed may be developed for non-residential uses to 70% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

§ 153.22 CLUSTER DEVELOPMENT.

Clustering of development is allowed in all watershed areas under the following conditions.

(A) Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in § 153.21 above.

(B) Built-upon area or storm water control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

(C) All built-upon area shall be designed and located to minimize storm water runoff impact to the receiving waters and minimize concentrated storm water flow.

(D) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management.

(E) Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

§ 153.23 BUFFER AREAS REQUIRED.

(A) A minimum of 100-foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum 50-foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of storm water best management practices.

Penalty, see § 153.99

§ 153.24 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed map, the following rules shall apply.

(A) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof; the lines shall be construed to be the boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, the lot lines shall be construed to be the boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the town as evidence that 1 or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Town Manager shall interpret the watershed map as to location of the boundaries. This decision may be appealed to the Board of Adjustment.

§ 153.25 APPLICATION OF REGULATIONS.

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.

(C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in § 153.26 below.

(D) If a use or class of use is not specifically indicated as being allowed in a watershed area, the use or class of use is prohibited.

Penalty, see § 153.99

§ 153.26 EXISTING DEVELOPMENT.

(A) Any existing development as defined in §§ 154.135 through 154.147 may be continued and maintained subject to the provisions provided herein.

(B) Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.

(1) Vacant lots. This category consists of vacant lots for which plats or deeds have been recorded in the Office of the Register of Deeds of Randolph County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:

(a) Where the existing lot area is below the minimum specified in this chapter, and the lot cannot be reasonably utilized to its greatest use (i.e. unable to meet some or all applicable setbacks with building/landscaping/etc), the owner may apply for a variance, which provides for compliance with the buffer requirement to the maximum extent practicable. The Town Manager is authorized to issue a watershed protection permit ; and

(b) Where the buffer standard needs to be modified due to the shape and/or size of a residential or non-residential lot, the owner may apply for a variance in order to obtain a watershed protection permit, provided the buffer requirement is complied with to the maximum extent practicable. The procedures for obtaining a minor or major variance are found in § 153.47 below.

(2) Occupied lots. This category consists of lots, occupied for residential purposes at the time of the adoption of this chapter. These lots may continue to be used.

(3) Uses of land. This category consists of uses existing at the time of adoption of this chapter where the use of land is not permitted to be established hereafter in the watershed area in which it is located. Those uses may be continued except as follows:

(a) When the use of land has been charged to an allowed use, it shall not thereafter revert to any prohibited use;

(b) Use of land shall be changed only to an allowed use; and

(c) When the use ceases for a period of at least 1 year, it shall not be reestablished.

(4) Reconstruction of buildings or built-upon areas. Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or destroyed by any means to an extent of more than 50% of its replacement cost or bulk, exclusive of foundations and land value may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:

(a) Repair or reconstruction is initiated within 12 months and completed within 2 years of the damage; and

(b) The total amount of space devoted to built-upon area may not be increased unless storm water control that equals or exceeds the previous development is provided.

§ 153.27 WATERSHED PROTECTION PERMIT.

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Town Manager.

(B) No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(C) Watershed protection permit applications shall be filed with the Town Manager. The application shall include a completed application form and supporting documentation deemed necessary by the Town Manager.

(D) Prior to issuance of a watershed protection permit, the Town Manager may consult with qualified personnel for assistance to determine of the application meets the requirements of this chapter.

(E) A watershed protection permit shall expire if a building permit or watershed occupancy permit for the use is not obtained by the applicant within 12 months from the date of issuance.

§ 153.28 BUILDING PERMIT REQUIRED.

After receiving a watershed protection permit, a building permit shall be obtained from the Randolph County Inspections Department for construction or alteration of any building or structure pursuant to the procedures of the County Inspections Department.

§ 153.29 WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) The Town Manager shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(B) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for at the same time as the application for a watershed protection permit and shall be issued or denied within 10 days after the erection or structural alterations of the building.

(C) When only a change in use of land or existing building occurs, the Town Manager shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met at the same time the watershed protection permit is issued.

(D) If the watershed protection occupancy permit is denied, the Town Manager shall notify the applicant in writing stating the reasons for denial.

(E) No building or structure which has been erected, moved or structurally altered may be occupied until the Manager has approved and issued a watershed protection occupancy permit.

Penalty, see § 153.99

PUBLIC HEALTH; ADMINISTRATION; ENFORCEMENT; APPEALS

§ 153.40 PUBLIC HEALTH IN GENERAL.

(A) No activity, situation, structure or land use shall be allowed within the watershed, which poses a threat to water quality and the public health, safety and welfare.

(B) Conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of storm water runoff; or any other situation found to pose a threat to water quality.

Penalty, see § 153.99

§ 153.41 ABATEMENT.

(A) The Town Manager shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) The Town Manager shall report all findings to the Board of Adjustment. The Manager may consult with any public agency or official and request recommendations.

(C) Where the Board of Adjustment finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

§ 153.42 WATERSHED ADMINISTRATOR; DUTIES.

(A) The Liberty Town Manager is hereby appointed the Watershed Administrator, who shall be duly sworn in that capacity.

(B) It shall be the duty of the Town Manager acting as Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(1) The Town Manager shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Town Manager;

(2) The Town Manager shall serve as Clerk to the Board of Adjustment, which sits as the Watershed Review Board;

(3) The Town Manager shall keep records of all amendments to the Town's Water Supply Watershed Protection Chapter and shall provide copies of all amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management;

(4) (a) The Town Manager shall keep records of the jurisdictions utilization of the provision that a maximum of 10% of the non-critical area of WS-III-BW watersheds may be developed with non-residential development to a maximum of 70% built-upon surface area.

(b) Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option and individual record for each project with the following information: location, acres, site plan, use, storm water management plan as applicable and inventory of hazardous materials as applicable;

(5) The Town Manager is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his or her responsibility the full police power of the town. The Town Manager, or his or her duly authorized representative, may enter any building, structure or premises, as provided by law, to perform any duty imposed upon him or her by this chapter; and

(6) (a) The Town Manager shall keep a record of variances to the local Water Supply Watershed Protection Chapter.

(b) This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on an annual basis and shall provide a description of each project receiving a variance and the reasons for granting the variance.

§ 153.43 APPEAL FROM THE TOWN MANAGER.

Any order, requirement, decision or determination made by the Town Manager may be appealed to and decided by the Board of Adjustment as specified in § 154.047.

§ 153.44 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION CHAPTER.

(A) The Liberty Town Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the Board of Adjustment for review and recommendation. If no recommendation has been received from the Board of Adjustment within 45 days after submission of the proposal to the Chairperson of the Board of Adjustment, the Town Council may proceed as though a favorable report had been received.

(C) Under no circumstances shall the Town Council adopt the amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. All amendments must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health and the North Carolina Division of Community Assistance.

§ 153.45 PUBLIC NOTICE AND HEARING REQUIRED.

Before adopting or amending this chapter, the Town Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for 2 successive calendar weeks in a newspaper having general circulation in the area.

§ 153.46 WATERSHED REVIEW BOARD.

The Liberty Board of Adjustment shall serve as the Watershed Review Board. The same rules of procedure as specified in the Zoning Chapter shall apply.

§ 153.47 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT ACTING AS WATERSHED REVIEW BOARD.

(A) Administrative review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Town Manager in the enforcement of this chapter.

(B) Variances. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.

(1) Application for a variance shall be made on the proper form obtained from the Town Manager and shall include information required by the Planning Department, at a minimum:

(a) A site plan, drawn to scale, indicating the property lines of the parcel upon which the use is proposed; and existing or proposed structures; parking areas and other built-upon areas; surface water drainage;

(b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Board of Adjustment in considering the application; and

(c) The Town Manager shall notify in writing each local government having jurisdiction in the watershed. The notice shall include a description of the variance bring requested. Local governments receiving notice of the variance request may submit comments to the Town Manager prior to a decision by the Board of Adjustment. The comments shall become a part of the record of proceedings of the Board of Adjustment.

(2) Before the Board of Adjustment may grant a variance, it shall make the following 3 findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(a) That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the 5 following conditions exist:

1. If he or she complies with the provisions of this chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his or her property. Merely providing that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of his or her property;

2. The hardship results from the application of this chapter to the property rather than from other factors such as deed restriction or other hardship;

3. The hardship is due to the physical nature of the applicant's property, such as its size, shape or topography, which is different from that of neighboring property;

4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates this chapter, or who purchases the property after the effective date of this chapter, and then comes to the Board for relief; and

5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(b) That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit; and

(c) That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety or general welfare.

(3) In granting the variance, the Board may attach the conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted, the construction, alteration or use shall be in accordance with the approved site plan.

(4) The Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with the section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for the use is not obtained by the applicant within 6 months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

(a) The variance application;

(b) The hearing notices;

(c) The evidence presented;

(d) Motions, offers of proof objections to evidence and rulings on them;

(e) Proposed findings and exceptions;

(f) The proposed decision, including all conditions proposed to be added to the permit.

(7) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

(a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that:

1. The property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted; and

2. The variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including the conditions and stipulations, granting the proposed variance.

(b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that:

1. The property owner can secure a reasonable return from and make a practical use of the property without the variance; or

2. The variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

(C) Subdivision approval. See §§ 153.05 and 153.06.

(D) Public health. See §§ 153.40 and 153.41.

§ 153.48 APPEALS FROM THE BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. The decisions of the Superior Court will be in the manner of certiorari.

§ 153.99 PENALTY.

(A) Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed $500. Each day that the violation continues shall constitute a separate offense.

(B) (1) If any subdivision, development and/or land use is found to be in violation of this chapter, the Town Council may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $100, action or proceedings to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct business or use in or about the premises. In addition, the North Carolina Environmental Management Commission may assess civil penalties in accordance with G.S. § 143-215.6A. Each day that the violation continues shall constitute a separate offense.

(2) If the Town Manager finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for the violation, indicating the nature of the violation, and ordering the action necessary to correct it. He or she shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal building or structures, or of additions, alterations or structural changes thereof; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Town Manager is questioned, the aggrieved party or parties may appeal the ruling to the Board of Adjustment.